



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1997

Ms. Nancy Barbour
Staff Attorney
Texas Department of Insurance
Legal and Compliance, MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR97-2503

Dear Ms. Barbour:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110393.

The Texas Department of Insurance (the "department") received a request for information relating to Complaint Id. No. 288829 and Legal Case No. 33036. You have released some of this information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.107, 552.111, and 552.112 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You contend that most of the documents at issue constitute attorney work product and should be excepted from disclosure under section 552.111. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open

Records Decision No. 647 (1996) at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

You state that the documents that you have marked as work product were created in anticipation of litigation against Title Agency of Houston, Inc. ("Title Agency"). We have reviewed the documents and note that the content of the documents indicates that they were created in anticipation of the department's enforcement action against Title Agency. It is also clear that the documents reflect the attorney's mental processes, conclusions and legal theories. Thus, we conclude that the department may withhold these documents from disclosure under section 552.111 as attorney work product. We have marked the documents accordingly.

You contend that a memorandum dated March 18, 1996 is an intraagency memorandum that should be excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5. We have marked the opinion portions of the March 18, 1996 memorandum that are excepted from disclosure under section 552.111. The remaining factual portions of the memorandum must be released.¹

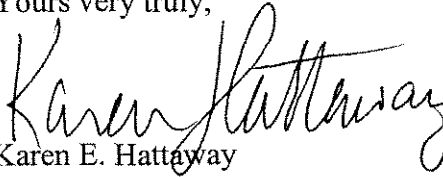
Finally, you claim that a group of documents is excepted from disclosure under section 552.112 of the Government Code. Section 552.112(a) excepts from disclosure "information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." Title Agency is regulated by the department and is considered a "financial institution" for purposes of section 552.112(a). See Open Records Decision Nos. 637 (1996) at 4, 158 (1977) at 5-6. The documents at issue under section 552.112(a) relate to an examination of this company. Based upon these considerations, we conclude that these documents are excepted from disclosure pursuant to section 552.112(a). We have marked these documents accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

¹You also claim that section 552.107(1) of the Government Code excepts the memorandum from disclosure. The only portions of the memorandum that are not protected by section 552.111 are the severable factual portions, and we note that section 552.107(1) does not protect these factual portions either. Open Records Decision No. 574 (1990) at 5-7.

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 110393

Enclosures: Marked documents

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(w/o enclosures)